REMARKS

Claims 16-21 and 36-46 are pending in this application. Claims 1-15 and 22-35 have been previously canceled. Claim 37 has been amended to correct the spelling of "transdermal". No new matter has been added as a result of this amendment.

Claim Objection

Claim 37 is objected to for the following informalities: "trasdermal" should be changed to "transdermal". Applicant has amended claim 37 to correct the informality.

35 U.S.C. §103 Rejections

Claims 16-21, 39-40, and 44-45 are rejected under 35 USC 103(a) as obvious over US Patent No. 6,939,852 ("Graham") in view of US Patent No. 5,591,767 ("Mohr") and in further view of US Patent No. 6,565,532 ("Yuzhakov"). The Applicant respectfully traverses since Graham is not a proper obviousness reference.

35 U.S.C. 103(c)(1) states "[s]ubject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person."

Graham was filed March 22, 2002, as a continuation-in-part of U.S. Application No. 08/211,352 filed on September 16, 1992, now U.S. Patent 6,395,277 (the '277 patent). The '277 patent does not disclose transdermal administration of botulinum toxin in accordance with the present claims. The disclosure the Office presumably uses to reject the present claims was first included in the March 22, 2002 filed Graham and is not entitled to the '277 patent's priority date of September 16, 1992. Instead, the disclosure the Office presumably uses to reject the present claims is entitled to a priority date of March 22, 2002. As such, the alleged disclosure of transdermal administration of botulinum toxin in accordance with the present claims can only be available as prior

art under 35 U.S.C. 102(e); and, if Graham was owned or subject to an obligation of common assignment at the time the claimed invention was made, it cannot serve as an obviousness reference under 35 U.S.C. 103(c).

Further, "[t]he applicant(s) or the representative(s) of record have the best knowledge of the ownership of their application(s) and reference(s), and their statement of such is sufficient evidence because of their paramount obligation of candor and good faith to the USPTO." MPEP 706.02(l)(2).

Common Ownership

The subject matter of the presently-pending claims and Graham were, at the time of invention, both owned by Allergan, Inc. or subject to assignment thereto.

Since Graham only can be available as prior art under 35 U.S.C. 102(e) and the present application and Graham were commonly owned (or subject to common assignment) at the time of invention of the present claims, Graham cannot be used to reject the present claims for obviousness. Accordingly, this rejection should be withdrawn.

Claims 36-38 and 41-43 are rejected under 35 USC 103(a) as obvious over Graham, Mohr, and Yuzhakov as applied the claims 16-21, 39-40, and 44 in view of US Patent No. 6,165,500 to Cevc.

As discussed above, since Graham only can be available as prior art under 35 U.S.C. 102(e) and the subject matter of the present claims and Graham were commonly owned or subject to common assignment at the time of invention of the present claims, Graham cannot be used to reject the present claims for obviousness under 103(c). Accordingly, this rejection also should be withdrawn.

CONCLUSION

Applicant respectfully requests that a timely Notice of Allowance be issued in this case. The Commissioner is authorized to charge any fee which may be required in connection with this Amendment to deposit account No. 50-3207.

Respectfully submitted,

Dated: 9 May 2008

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